

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CMG WORLWIDE, INC., an Indiana Corporation and MARILYN MONROE, LLC, a Delaware Limited Liability Company,

Plaintiffs,

-against-

BRADFORD LICENSING ASSOCIATES and the  
SHAW FAMILY ARCHIVES, LTD. a New York  
Corporation,

Defendants.

05 Civ. 3939 (CM)  
06 Civ. 2619 (CM)  
(formerly No. 1:05-cv-0423-DFH-WTL)

**ANSWER TO THIRD AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES**

Defendants Bradford Licensing Associates (“Bradford”) and Shaw Family Archives, Ltd., (“SFA”), by the undersigned counsel, respond to the allegations in the Complaint as follows:

1. Defendants deny each and every allegation of this paragraph except Defendants admit that plaintiffs originally commenced this action on or about March 23, 2005.
2. Admitted.
3. Defendants deny each and every allegation of this paragraph except Defendants admit that on May 2, 2007, this Court issued an order granting Defendants' motion for summary judgment dismissing Count II of Plaintiffs' Second Amended Complaint.
4. Defendants deny each and every allegation of this paragraph.
5. Defendants deny each and every allegation of this paragraph.
6. Defendants deny each and every allegation of this paragraph.
7. Defendants lack sufficient information to form an accurate belief as to the truth of



the allegations of this paragraph and therefore deny the same.

8. Defendants lack sufficient information to form an accurate belief as to the truth of the allegations of this paragraph and therefore deny the same.

9. Admitted except that Bradford is a New York entity.

10. Admitted.

11. Admitted.

12. Admitted.

13. Defendants deny each and every allegation of this paragraph.

14. Defendants deny each and every allegation of this paragraph.

15. Defendants lack sufficient information to form an accurate belief as to the truth of the allegations of this paragraph and therefore deny the same.

16. Defendants lack sufficient information to form an accurate belief as to the truth of the allegations of this paragraph and therefore deny the same.

17. Defendants lack sufficient information to form an accurate belief as to the truth of the allegations of this paragraph and therefore deny the same.

18. Admitted.

19. Admitted.

20. Admitted.

21. Defendants deny each and every allegation set forth in this paragraph but admit that Bradford represents SFA and that SFA controls the marketing and licensing of certain images of Marilyn Monroe.

22. Defendants deny each and every allegation set forth in this paragraph but admit that SFA controls the marketing and licensing of all photographs of Marilyn Monroe taken by



Sam Shaw (the "Shaw Photos").

23. Defendants lack sufficient information to form an accurate belief as to the truth of the allegations of this paragraph and therefore deny the same.

24. Defendants deny each and every allegation of this paragraph.

25. Defendants deny each and every allegation of this paragraph.

26. Defendants deny each and every allegation of this paragraph.

27. Defendants deny each and every allegation of this paragraph.

28. Defendants repeat and represent each and every answer set forth to paragraphs 1 through 27 as if fully set forth herein.

29. Admitted.

30. Defendants deny each and every allegation of this paragraph.

31. Defendants deny each and every allegation of this paragraph.

32. Defendants deny each and every allegation of this paragraph.

33. Defendants deny each and every allegation of this paragraph.

34. Defendants deny each and every allegation of this paragraph.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

1. Each of the counts in the Complaint fail to state a cause of action upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

2. Plaintiffs' claims are barred by the applicable Statute of limitations.

#### **THIRD AFFIRMATIVE DEFENSE**

3. Plaintiffs have failed to mitigate their damages.



**FOURTH AFFIRMATIVE DEFENSE**

4. The Complaint fails to state a claim against Defendants upon which relief can be granted in that the Plaintiffs claims, if any, are barred by the doctrines of laches, estoppel and acquiescence.

**FIFTH AFFIRMATIVE DEFENSE**

5. Plaintiffs' claims are barred by the doctrine of waiver.

**SIXTH AFFIRMATIVE DEFENSE**

6. Plaintiffs' claims are barred by fraud or their other inequitable conduct.

**SEVENTH AFFIRMATIVE DEFENSE.**

7. Plaintiffs' claims are barred by the doctrine of unconscionability.

**EIGHTH AFFIRMATIVE DEFENSE**

8. Plaintiffs' claims are barred by the doctrine of unclean hands.

**NINTH AFFIRMATIVE DEFENSE**

9. Plaintiffs' claims are either partially or wholly diminished by the doctrine of set off.

**TENTH AFFIRMATIVE DEFENSE**

10. Plaintiffs lack standing to bring some or all of the claims asserted.

**ELEVENTH AFFIRMATIVE DEFENSE**

11. Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

**TWELFTH AFFIRMATIVE DEFENSE**

12. To the extent they are entitled to any relief, plaintiffs are not entitled to injunctive relief because they have an adequate remedy at law.

**THIRTEENTH AFFIRMATIVE DEFENSE**

13. To the extent they are entitled to any damages, plaintiffs are not entitled to treble



damages, punitive damages and/or statutory damages.

Dated: August 24, 2007

LAW OFFICE OF DAVID M. MARCUS

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